Filed 11/10/09 In re N.W. CA2/8

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re N.W. et al., Persons Coming Under the Juvenile Court Law.	B214049
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. W.W. et al., Defendants and Appellants.	(Los Angeles County Super. Ct. No. CK55026)

APPEAL from an order of the Superior Court of Los Angeles County. Jan Levine, Judge. Reversed and remanded.

Tyna Thall Orren, under appointment by the Court of Appeal, for Defendant and Appellant W.W.

Christopher Blake, under appointment by the Court of Appeal, for Defendant and Appellant N.J.

James M. Owens, Assistant County Counsel, and Melinda S. White-Svec, Deputy County Counsel, for Plaintiff and Respondent.

Appellants N.J. (mother) and W.W. (father) appeal from the February 5, 2009 order terminating their respective parental rights to A.H. and his half-siblings, N.W. and M.W. (collectively, the children).[1] Both parents and the Department of Children and Family Services (the department) agree that the matter must be remanded to the juvenile court for compliance with the Indian Child Welfare Act (ICWA). In addition, father contends the juvenile court erred in denying his Welfare and Institutions Code section 388 petition seeking reunification services under *Adoption of Kelsey S.* (1992) 1 Cal.4th 816 (*Kelsey S.*).[2] And mother contends the juvenile court erred in refusing to hold a hearing on her request to have her appointed counsel replaced under *People v. Marsden* (1970) 2 Cal.3d 118 (*Marsden*). We remand for compliance with ICWA but otherwise affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

A.H. was born in September 1995; N.W. in June 2002; and M.W. in July 2006. The family first came to the attention of the department in 2002 when it received a referral alleging that A.H. was the victim of general neglect and emotional abuse. The allegations were determined to be unfounded. In 2004, N.W. became the subject of a section 300 petition alleging that mother failed to follow up on medical treatments for N.W.'s failure to thrive condition and failed to provide N.W. with appropriate immunizations. That case was closed in 2005 after mother reunified with N.W.

This case originated on July 14, 2006, after officers from the Santa Monica Police Department responding to a child abuse referral heard mother, locked inside her apartment, say to four-year-old N.W., "I feel like stabbing you." The officers gained access to the apartment and observed a mark and swelling on N.W.'s eye. Mother admitted hitting N.W. on the leg with a belt, but denied hitting her on the eye. N.W. was

---

[1] Mother is the mother of all three children; father is the biological father of only N.W. and M.W. A.H.'s father, A.H., Sr., is not a party to this appeal.

[2] All future undesignated statutory references are to the Welfare and Institutions Code.

detained and mother, who was pregnant with M.W., was arrested for child abuse. Shortly thereafter mother was released from jail and a few days later she gave birth to M.W.

Meanwhile, on July 19, 2006, a section 300 petition was filed which, as eventually sustained, alleged that A.H. and N.W. were dependent children as a result of mother using excessive discipline on N.W. (§ 300, subd. (a)). The petition identified "C.W." as N.W.'s father.[3] According to the detention report, "C.W." was living in Texas at an unknown address. But when interviewed by the social worker, A.H.'s paternal grandmother said she had never heard of "C.W." and thought N.W.'s father's name was W. The juvenile court found "C.W." to be N.W.'s alleged father and ordered no reunification services for him.

A section 300 petition was filed as to newborn M.W. in November 2006.[4] As eventually sustained, that petition alleged that mother inappropriately disciplined M.W.'s sibling, and her siblings were both adjudged dependent children (§ 300, subd. (j)). The petition stated that M.W.'s father was unknown, but the detention report stated that when mother was arrested for abusing N.W. she told officers that "C.W." was the father of her unborn baby. Later, mother identified "R.B.," living at an unknown address in Inglewood, as M.W.'s father. The juvenile court found R.B. to be an alleged father. It ordered no reunification services for C.W. or R.B.

Mother's and M.W.'s whereabouts remained unknown until February 7, 2007, when mother appeared at a status review hearing for A.H. and N.W. and jurisdictional hearing for M.W. M.W. was detained the next day and placed in a nonrelative foster home. Meanwhile, A.H. had been placed in the home of his paternal grandmother, with whom A.H. had been living for several years but without a formal custody arrangement. N.W. was initially placed in a nonrelative foster home but later joined A.H. in A.H.'s

---

3 "C." was father's school nickname.

4 The department had become concerned for M.W.'s well-being because mother was denying that she had a new baby and her whereabouts had become unknown; although mother kept in telephone contact with the department, she stopped visiting A.H. and N.W. when the social worker began asking about M.W.

paternal grandmother's home. By September 2007, all three children were doing well in their respective placements, but the family had not reunified. Accordingly, the juvenile court terminated mother's reunification services and set the matter for a contested section 366.26 hearing (.26 hearing).

After several continuances, the .26 hearing was still pending in April 2008 when paternal grandmother expressed a desire to adopt all three children. M.W. was placed with paternal grandmother, and the .26 hearing was continued to August 2008.

Paternal grandmother's efforts to adopt all three children were derailed for a short time when allegations (apparently by mother and M.W.'s former foster mother) that she smoked marijuana in front of the children caused the department to detain the children from paternal grandmother's home and file a section 387 supplemental petition in September 2008. The children were soon returned to paternal grandmother and that petition was dismissed in October 2008.

Father made his first appearance and was appointed counsel at the September 12, 2008 detention hearing on the department's section 387 petition. Father's counsel explained that father had not been found earlier because his first name was W., not C. On October 7, 2008, father filed a section 388 petition seeking a determination that he was "a *Kelsey S.* father and if the DNA test results indicate that [father] is the biological father, grant [father] reunification services." Father's section 388 petition was set for hearing on December 8, 2008, the same day a section 388 petition filed by the department seeking to modify mother's visitation from unmonitored to monitored was set to be heard.

On December 8, 2008, following a *Marsden*-type hearing, the juvenile court granted father's motion to replace his appointed counsel with privately retained counsel and continued the hearing on father's section 388 petition to February 5, 2009, the date already set for the continued .26 hearing. Father left the courtroom.

Although it continued the hearing on father's petition, the juvenile court stated its intention to hear the department's visitation petition. Mother's counsel denied mother's accusation that he was not prepared and, in response to mother's complaint that he had not subpoenaed her children as witnesses, counsel explained that the children had been

ordered to be present at the .26 hearing. Mother stated, "I want a new attorney. I already did a grievance. I did a complaint form. He's called me retarded (indicating). You're bias to my case on the surface (indicating). She has a mole on her face (indicating). That's what it is, he's a sorry attorney (indicating). You guys are biased . . . ." Mother's counsel explained that he informed mother that she was entitled to another attorney, but she had not responded. When counsel for the department suggested that the other attorneys should leave the courtroom, the juvenile court said it was "not considering this a *Marsden* hearing." The court instructed mother's attorney to ask his supervisor whether there was anyone else in counsel's firm who could represent mother and then stated its intention to hear the department's petition. Expressing frustration, mother left the courtroom before the petition was argued. The juvenile court granted the department's petition and ordered that mother and father have separate, monitored visits in the department's office.

Mother and father both appeared at the .26 hearing on February 5, 2009. The juvenile court first took up the matter of father's section 388 petition with father representing himself because he had not obtained counsel. In support of his petition, father argued that because he was N.W. and M.W.'s biological father, and because he had a job and a home, the children should be returned to him. Counsel for the department countered that, since his first appearance in September, father had visited his children only seven times and just once since the December hearing. Counsel for the children concurred with the department. The juvenile court denied father's petition.

Once again expressing frustration, mother and father left the courtroom before the .26 hearing commenced; mother, however, was represented by her counsel at the .26 hearing. The juvenile court admitted into evidence various reports without objection. Finding the children likely to be adopted and that no exceptions to the preference for adoption had been established, the juvenile court terminated all parental rights to the children.

Mother and father filed notices of appeal on February 5, 2009.[5]

DISCUSSION

A. *ICWA*

ICWA ensures an Indian tribe's right to intervene in dependency proceedings by requiring that the party seeking termination of parental rights notify the Indian child's tribe or tribes of such proceedings. (*In re Desiree F.* (2000) 83 Cal.App.4th 460, 469.) When proper notice is not given, the dependency court's order is voidable under federal law. (*In re Brooke C.* (2005) 127 Cal.App.4th 377, 384.) Parents cannot waive ICWA requirements regarding notice to the tribes. (*In re Jennifer A.* (2002) 103 Cal.App.4th 692, 707.)

Here, mother told the social worker she had "Senicean Indian and some Rema Indian" ancestry and that N.W.'s father had "Portuguese and Indian" ancestry, but she did not know which tribe.[6] Pursuant to the juvenile court's order, the department noticed the Bureau of Indian Affairs, Office of Tribal Affairs, Department of the Interior, Seneca Nation of Indians, Tonawanda Band of Senecas, Seneca-Cayuga Tribe of Oklahoma, and the Cayuga Nation.[7] The Department of the Interior notified the department that the

---

[5] Mother's notice states: "On 2/5/2009 there was a 26 hearing and my 388 was denied and I would like to have all new parties including Judge Levine. Due to my attorney letting me know on 4/7/2008 that she had been bias towards me and my case." Although mother's notice does not reference the December 8, 2008 proceedings at which she contends the juvenile court erred by refusing to hold a *Marsden*-type hearing on her request for new counsel, we construe her appeal to be from that hearing as well. (Cal. Rules of Court, rule 8.100(a)(2).)

[6] The Bureau of Indian Affairs later advised the department that the "Rema Tribe" was not a federally recognized tribe.

[7] The Seneca-Cayuga Tribe of Oklahoma responded that it had no record of A.H., N.W., mother or either biological father; the Seneca Nation responded that neither child nor any parent was a member of the tribe.

Seneca Tribes had not been properly advised. Nevertheless, on October 20, 2006, the juvenile court found ICWA notice was complete and that it was not an ICWA case.

After M.W. was detained, mother acknowledged that the juvenile court previously found ICWA did not apply through her to A.H. and N.W.; mother said she had no reason to believe R.B. (the other man mother identified as M.W.'s alleged father) had any Native American ancestry. The juvenile court found ICWA did not apply to M.W.

When father appeared in the proceedings, he declared that he may be a member of the "Lumbee Creek" tribe, which he thought was affiliated with the Eastern Band of the Cherokee Indians. The juvenile court ordered an investigation into father's Indian ancestry. Father told the social worker that his family was not registered with the Bureau of Indian Affairs, he did not know with which tribe his family was associated and did not want to pursue the issue of Indian heritage. Father did not appear for an appointment with the social worker to complete the ICWA form. No ICWA notices were sent out to determine whether N.W. and M.W. had any Indian heritage through father.

As the department concludes, the failure to comply with the ICWA notice requirements mandates a limited reversal of the juvenile court's order terminating parental rights for the purpose of complying with the statute.

B. *Substantial Evidence Supports Denial of Father's Section 388 Petition*

Father contends the juvenile court erred in denying his section 388 petition for a determination that he is a *Kelsey S.* father and for reunification services. As we understand his argument, the trial court's finding that he was not a *Kelsey S.* father was not supported by substantial evidence. We find no error.

Upon a challenge to the sufficiency of the evidence, "we review the facts most favorably to the judgment, drawing all reasonable inferences and resolving all conflicts in favor of the order. [Citation.] We do not reweigh the evidence but instead examine the whole record to determine whether a reasonable trier of fact could have found for the respondent. [Citation.]" (*In re Spencer W.* (1996) 48 Cal.App.4th 1647, 1650.)

In *Kelsey S.*, an unwed mother made arrangements to have her child adopted at birth by third parties, over the objection of the biological father. Two days after the child was born, the father filed an action to establish his parental relationship and obtain custody. The trial court terminated the father's parental rights, thus freeing the child for adoption. On appeal, our Supreme Court held: "If an unwed father promptly comes forward and demonstrates a full commitment to his parental responsibilities—emotional, financial, and otherwise—his federal constitutional right to due process prohibits the termination of his parental relationship absent a showing of his unfitness as a parent." (1 Cal.4th at p. 849.)

Kelsey S. is applicable in the dependency context. In *In re Elijah V.* (2005) 127 Cal.App.4th 576, 583, the court explained that a biological father may be accorded parental rights and become what is known as a *Kelsey S.* father when, although he has not satisfied the Family Code section 7611, subdivision (d) conditions to become a presumed father, he has made a full commitment to his parental responsibilities but a third party has thwarted his attempt to achieve presumed parent status under Family Code section 7611, subdivision (d). The factors to consider in determining whether a man is a *Kelsey S.* father are the man's "conduct before and after the child's birth, including whether he publicly acknowledged paternity, paid pregnancy and birth expenses commensurate with his ability to do so, and promptly took legal action to obtain custody of the child. [Citation.] He must demonstrate a full commitment to his parental responsibilities within a short time after he learned that the biological mother was pregnant with his child. [Citation.] He must also demonstrate a willingness to assume full custody. [Citation.]" (*Elijah V.*, at p. 583.) None of the *Kelsey S.* factors is present in this case.

Here, at the continued .26 hearing in April 2008, the juvenile court found notice by publication was complete for alleged fathers "C.W." and "R.B.," but continued the .26 hearing for completion of a home study report for paternal grandmother's home. Father made his first appearance and was appointed counsel at the September 2008 detention hearing on the department's section 387 petition. His counsel explained that he had no notice of the proceedings because his first name was W., not "C.," which was a

nickname. Counsel asked that N.W. and M.W. be immediately released to father because he was nonoffending and "[h]e didn't know about the case. He didn't receive notice. The mother had told him everything was fine with the family. He had been visiting the girls. . . . The mother never told him what was happening." Father confirmed that although he was N.W.'s and M.W.'s father, he did not sign a paternity declaration for either child and they never lived with him. Father said that he had been working as a nurse in Los Angeles for the past year; he last saw N.W. and M.W. "a few months when I saw -- when I first found out she was over [paternal grandmother's] house." The juvenile court ordered monitored visits for father and continued the matter to: October 6, 2008, for a status hearing; October 27, 2008, for adjudication of the section 387 petition; and February 5, 2009, for the .26 hearing.

On October 6, 2008, the juvenile court dismissed the department's section 387 petition. Father filed a section 388 petition. In a declaration submitted in support of that petition, father stated that he visited N.W. and M.W. in the hospital shortly after each was born (N.W. in 2002 and M.W. in 2006). From her birth until October 2003, father visited N.W. "at least one to two times a week as my schedule allowed." But from October through December 2003, father was out of town on business and when he returned he discovered that mother had moved. Father's efforts to locate mother and N.W. failed and he did not hear from mother until the summer of 2005. For the next several months, father visited mother and N.W. regularly. In February 2006, mother moved a second time without informing father. Once again, father tried but failed to find her and N.W. Father next heard from mother in August 2006, when she told him that M.W. had been born and that he was her biological father. After visiting M.W. in the hospital, father left town again, telling mother he "would come to visit once I came back." When father returned to town in early 2007, mother had moved a third time and father's efforts to contact her were once again unsuccessful. Mother contacted father again in August 2008 and told him that she might lose her children, but did not tell him they had already been detained. When father arrived in court at the end of a hearing on August 12, 2008, mother told him "everything was fine and that she got unmonitored

visits and was getting the children back into her care." Father first learned that N.W. was living with paternal grandmother a few weeks later when paternal grandmother asked father to come over and he saw N.W. at her home. Before the September 12, 2008 hearing, mother told father that the children were being removed from paternal grandmother's care. Father maintained that he told his grandmother, mother and friends that N.W. and M.W. were his children; he bought them toys and, when they were infants, changed their diapers; he fed N.W. and took her to visit his grandmother; he tried to provide for his children financially and when mother refused his money he tried to find "creative ways to leave her financial assistance for the children."

This evidence is insufficient to establish father as a *Kelsey S.* father. There was no evidence that father paid pregnancy and birth expenses for either child, although he knew they were his children within days of each child's birth. There was also no evidence he did anything to have his name placed on their birth certificates or took any steps to obtain legal joint-custody of them when they were born. Moreover, there is no evidence that father made any affirmative efforts to stay in touch with mother and his children while he was out of town for months at a time. When he returned and found mother had disappeared with N.W. the first time, father did not contact the authorities or take any other legal steps to find his missing child. And when father reconnected with mother and N.W. several months later, he took no legal action to formalize his status as N.W.'s father, to take financial responsibility for her or to prevent mother from disappearing with her again. And when mother did exactly that, father once again did not contact the authorities or take other legal action to find his child or establish custody or visitation rights. Father also did not contact the authorities when mother moved a third time with N.W. and M.W. On this record, substantial evidence supports the juvenile court's finding that father did not demonstrate a full or timely commitment to his parental responsibilities sufficient to qualify as a *Kelsey S.* father.

We are not persuaded otherwise by father's argument that "when [he] learned of the dependency proceedings, he promptly came forward and demonstrated a full commitment to his parental responsibilities by (a) taking legal action to obtain custody of

[his] children, (b) continuing to provide for his daughters financially, as he had always done, and (c) continuing to maintain visitation to the best of his ability. From the beginning to the end of the proceedings, however, [father's] efforts were frustrated by Mother, who not only prevented [father] from having a relationship with the children, but also prevented DCFS from allowing [him] to do so by giving DCFS and the court incorrect information about the father's identity and probable whereabouts." (Italics omitted.) First, where, as here, a man has reason to know that he is a biological father at or near the time of the child's birth, taking legal action to obtain custody only after dependency proceedings have been ongoing for several years does not constitute promptly coming forward as required by *Kelsey S*. Second, buying occasional toys does not constitute providing financially for children. Third, sporadically visiting the children does not demonstrate a commitment to assuming parental responsibilities for them. And finally, where, as here, a biological father visits his newborn in the hospital but elects to not sign the child's birth certificate or take other steps to legally formalize his parental status, he cannot blame anyone but himself for not receiving notice of subsequent dependency proceedings.

C. *The Juvenile Court Satisfied Its Obligations Under* Marsden

Mother contends she was denied due process as a result of the trial court's refusal to provide her a full *Marsden* hearing when she expressed her dissatisfaction with appointed counsel at the December 8, 2008 hearing on the department's section 388 petition to modify the visitation order.[8] We find no error.

Section 317, subdivision (b) requires appointment of counsel for an indigent parent in a juvenile dependency case where the recommendation is out-of-home care. (*In re A.M.* (2008) 164 Cal.App.4th 914, 923.) All parents who are represented by

---

[8] We note that mother does not contend that she received ineffective assistance of counsel, only that the trial court erred in failing to hold a *Marsden* hearing. Accordingly, we do not consider the question of ineffective assistance of counsel. (*People v. Stanley* (1995) 10 Cal.4th 764, 793 [in the absence of legal argument on an issue, the appellate court may treat it as waived].)

counsel have a statutory right to competent counsel at all dependency proceedings (§ 317.5, subd. (a)). When an indigent parent expresses dissatisfaction with his or her court-appointed attorney, the juvenile court should hold a *Marsden*-type hearing. (*In re Ann S.* (1982) 137 Cal.App.3d 148, 149-150.)

"The governing legal principles [of *Marsden*] are well settled. ' "When a defendant seeks to discharge his appointed counsel and substitute another attorney, and asserts inadequate representation, the trial court must permit the defendant to explain the basis of his contention and to relate specific instances of the attorney's inadequate performance. [Citation.] A defendant is entitled to relief if the record clearly shows that the first appointed attorney is not providing adequate representation [citation] or that defendant and counsel have become embroiled in such an irreconcilable conflict that ineffective representation is likely to result [citations]." [Citations.]' [Citation.] '[S]ubstitution is a matter of judicial discretion. Denial of the motion is not an abuse of discretion unless the defendant has shown that a failure to replace the appointed attorney would "substantially impair" the defendant's right to assistance of counsel.' [Citations.]" (*People v. Hart* (1999) 20 Cal.4th 546, 603.)

In the dependency context, an exhaustive *Marsden* hearing is not required. It is only necessary that the juvenile court "make some inquiry into the nature of the complaints against the attorney." (*In re James S.* (1991) 227 Cal.App.3d 930, 935, fn. 13.)

Here, mother was represented by appointed counsel at the December 8, 2008 hearing on the department's petition to modify the visitation orders. During that hearing, the following colloquy occurred between mother, her counsel and the trial court, after mother asked to address the court directly: "THE COURT: Your attorney can address the court. [¶] [MOTHER]: He's not prepared. [¶] [COUNSEL]: No, I am. [¶] [MOTHER]: Go ahead. Let's see what you have." After her counsel said that mother did not want to testify, mother stated that she did not want to go forward with the hearing because the children were not present. Mother complained that she asked counsel to subpoena "so many witnesses" and she was "not going to go forward with the 388. There

should be an order for my kids to be here so they can be cross-examined."[9] Mother stated: "I want a new attorney. I already did a grievance. I did a complaint form. He's called me retarded (indicating). She has a mole on her face (indicating). That's what that it is. He's a sorry attorney (indicating). You guys are biased even when he has evidence and proof. [¶] THE COURT: [Mother], if you want to have him removed -- [¶] [MOTHER]: Please, somebody. That's not going to argue anything before the court. [¶] THE COURT: We should have considered that before we started this hearing, [mother], and we are going to go forward with the hearing. [¶] . . . [¶] [COUNSEL]: We can ask for a *Marsden*. [¶] THE COURT: The attorney can make a statement. [¶] [COUNSEL]: Yes, Your Honor. I've tried for quite some time. I've told [mother] she's entitled to another attorney. There's no problem, no hard feelings. As late as the beginning of this month I sent her a letter asking her how come she hasn't gotten back to me about the 388. I constantly call her -- well, not constantly. [¶] [THE DEPARTMENT]: I'm sorry to interrupt, [mother's counsel], but I don't think other counsel should be present if he's going to be -- [¶] THE COURT: I'm not considering this a *Marsden* hearing. [¶] [MOTHER]: Yeah, this is not -- [¶] THE COURT: That's not the procedure we go through. You're going to have to ask your supervisor to talk to [mother], see if there's anyone else who can possibly represent her in your firm. I'm not going to entertain it. [¶] In the meantime, I'm going to rule on your 388. [¶] [MOTHER]: I know, I just want my kids to be here. I don't cuss at [A.H.] like that. [N.W.]'s telling me so much stuff. [¶] THE COURT: It's too late to have them here if it's not requested previous to today's hearing. [¶] They have statements in the report, and based on the report that I'm going to take into evidence today, the report dated December 8th, I'm going to order that your visits remain monitored and you are not to

---

9 Mother did not appear at the October hearing at which the December 8, 2008 hearing date on the section 388 petitions was set, but she was represented by counsel. At the October hearing, it was agreed that the children did not need to appear at the December hearing, but would be present at the February .26 hearing.

visit with [father]. [¶] [MOTHER]: I didn't do it with [father].[10] I want them to bring forward some proof, some evidence. [¶] THE COURT: I'm also going to order that unless you -- [¶] [MOTHER]: Most of that stuff is lies, like we recorded. The kids we recorded -- [¶] THE COURT: Are you leaving? If you're leaving, leave. [¶] [THE DEPARTMENT]: And the court reporter's not typing any of this, I hope. [¶] (Mother leaves the courtroom.)"

Mother and father both appeared on February 5, 2009. In the context of the hearing on father's section 388 petition (at which father represented himself because he had not obtained counsel), the juvenile court told father that he could not cross-examine the children to establish that he had a relationship with them. The following colloquy ensued: "[MOTHER]: Then he needs to have a counsel. [¶] [FATHER]: Then how I'm am I -- [¶] . . . [¶] [MOTHER]: We have a right to trial, to counsel. [My appointed counsel] says he wrote me letters and stuff. He did not do half of the work. I prepared all my declarations. I can go on for days and days and days. [¶] [Father] does have a relationship with [N.W.]" After some additional colloquy, mother and father left the courtroom before the court ruled on father's section 388 petition. They were not present for the .26 hearing that immediately followed.

This record demonstrates that on December 8, 2008, the juvenile court satisfied its obligation under *Marsden* by giving mother an opportunity to explain the basis of her request for substitute counsel: her attorney failed to subpoena her children to testify at the section 388 hearing, called her retarded, has a mole on his face, was a sorry attorney, and was biased. Although mother complained on February 5, 2009, that father was entitled to counsel and that her own counsel "did not do half of the work," mother did not request new counsel at this hearing. The juvenile court could reasonably conclude that mother's failure to request new counsel on February 5, 2009, constituted an abandonment

---

10 This appears to be a reference to an allegation that while A.H. and N.W. were with mother during an unmonitored visit, father and mother tried to coerce them into tape recording a statement that they wanted to live with mother.

of her previous claim. (*People v. Obie* (1974) 41 Cal.App.3d 744, 750, disapproved on other grounds by *People v. Rollo* (1977) 20 Cal.3d 109, 120, fn. 4.)

DISPOSITION

The order terminating parental rights is reversed. The matter is remanded to the juvenile court with directions to order the department to provide the Bureau of Indian Affairs and any other appropriate tribe with proper notice under ICWA. If those tribes indicate the children are not Indian children, the juvenile court shall reinstate the order terminating parental rights. If, however, it is determined that the children are indeed Indian children, then the juvenile court shall proceed in accordance with ICWA.

RUBIN, ACTING P. J.

WE CONCUR:

BIGELOW, J.

MOHR, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.